

REMARKS

Reconsideration of this application in light of the present amendment and remarks is respectfully requested. In the outstanding office action, claims 1-10 are pending in the application. Claims 1-10 are rejected.

Claims 1-3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (U.S. 6,002,937) in view of Raith et al. (U.S. 5,603,081).

Claims 4-10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (U.S. 6,002,937) as applied to claims 1 and 2 above, and further in view of Henry, Jr. et al. (U.S. 6,560,453 B1).

RESPONSE TO THE OFFICE ACTION

In response to the Applicant's obligation under 37 C.F.R. 1.56 and further in compliance with 35 U.S.C. par. 102 (f) and (g) and 35 U.S.C. 103, the subject matter of the various claims was commonly owned at the time the invention was made.

Applicant notes that Applicant has not received a Notice of Draftsperson's Patent Drawing Review (PTO-948) for this case. Applicant respectfully requests Examiner to forward such document when available.

Claim Rejections - 35 U.S.C. § 103(a):

The rejection of Claims 1-3 under 35 U.S.C. 103(a) as being unpatentable over Young et al. (U.S. 6,002,937) in view of Raith et al. (U.S. 5,603,081) is respectfully traversed and reconsideration and withdrawal of the rejection is respectfully requested at this time.

Applicant respectfully requests the examiner to disqualify Young et al. (U.S. 6,002,937) from being used in the rejection of Claims 1-3 under 35 U.S.C. 103(a) as having common ownership. Applicant's present application 09/627,170 and Young et al. (U.S. 6,002,937) were, at the time the invention of Applicant's present application 09/627,170 was made, owned by and subject to an obligation of assignment to the same company, Motorola, Inc.

Further, Applicant respectfully submits that Young et al. (U.S. 6,002,937) in view of Raith et al. (U.S. 5,603,081) does not anticipate the invention recited in Claims 1 -3. Specifically, Applicant respectfully disagrees with the examiner's characterization of Raith et al. (U.S. 5,603,081) as anticipating "transmitting packets of the message in the assigned time slot of adjacent cycles of the protocol when the housing is in the first position and transmitting packets of the message in the assigned time slot of every nth cycle of the protocol when the housing is in the second position."

In Raith, there is neither recitation nor anticipation of the housing having more than one position, and the transmission duty cycle being dependent upon such positions. Even if, as the examiner suggests, it would have been obvious to add a housing with various positions to the mobile station of Raith, (which Applicant respectfully does not agree that it would be) the transmission duty cycle in Raith is determined by the system itself, not the mobile station. Further, there is neither recitation nor anticipation in Raith that the frequency of transmission

varies as the position of the housing portions varies. In other words, Raith does not anticipate the mobile station having a variable transmission duty cycle pattern based on housing positioning.

Applicant respectfully directs the examiner to column 7, lines 57-61 of Raith which states:

“According to IS-54B, each digital TDM RF channel can carry from three to six digital speech channels (three to six telephone conversations) depending on the source rate of the speech coder used for each digital speech channel (the modulation level and channel bandwidth are set in IS-54B).”

In other words, Raith presumes fixed transmission duty cycles rather than variable as in Applicant's claimed invention. Applicant therefore respectfully submits that Young in view of Raith does not anticipate Applicant's invention as recited in Claims 1-3.

The rejection of Claims 4-10 under 35 U.S.C. 103(a) as being unpatentable over Young et al. (U.S. 6,002,937) as applied to claims 1 and 2, and further in view of Henry, Jr. et al. (U.S. 6,560,453 B1) is respectfully traversed and reconsideration and withdrawal of the rejection is respectfully requested at this time.

Applicant respectfully requests the examiner to disqualify Young et al. (U.S. 6,002,937) from being used in the rejection of Claims 4-10 under 35 U.S.C. 103(a) as having common ownership. Applicant's present application 09/627,170 and Young et al. (U.S. 6,002,937) were, at the time the invention of Applicant's present application 09/627,170 was made, owned by and subject to an obligation of assignment to the same company, Motorola, Inc.

Applicant respectfully submits that that Young et al. (U.S. 6,002,937) as applied to claims 1 and 2, and further in view of Henry, Jr. et al. (U.S. 6,560,453 B1) does not anticipate the invention as recited in Applicants claims 4-10 for the reasons set forth above in association with claims 1-3.

Applicant further respectfully requests reconsideration of the rejection of claims 4-7 without amendment. Claims 4-7 contain further limitations of the believed allowable claim 3.

Applicant further respectfully submits that Young et al. (U.S. 6,002,937) as applied to claims 1 and 2, and further in view of Henry, Jr. et al. (U.S. 6,560,453 B1) does not anticipate the invention as recited in Applicant's claims 8-10. Specifically, Applicant respectfully

disagrees with examiner's recitation that "Raith et al and Henry, Jr. et al. disclose a method of controlling a transmit duty cycle of the transmitter by a position of the at least one portion of the two portions of the housing." Neither Raith nor Henry taken singly or in combination recite nor anticipate a method including associating transmit duty cycles with positions of various portions of a housing and varying the transmit duty cycle according. As discussed above, Raith anticipates only a fixed transmit duty cycle specified by the system itself.

Claims 1-10 define novel structure and methodology as described above, Applicant respectfully submits that such claims are clearly patentable, and reconsideration and withdrawal of the rejection of Claims 1-10 is respectfully requested at this time.

For the foregoing reasons, applicants respectfully request that the above rejections be withdrawn.

Inasmuch as this amendment distinguishes all of the applicants' claims over the prior art references, for the many reasons indicated above, passing of this case is now believed to be in order. A Notice of Allowance is earnestly solicited.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim, unless applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If the Examiner believes that there are any informalities which can be corrected by Examiner's amendment, or in the event that the Examiner deems the present application non-allowable, a telephone call to the undersigned at (954) 723-6449 is respectfully solicited.

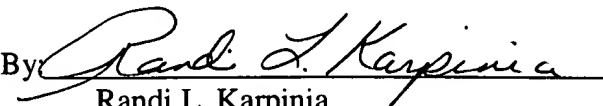
Authorization is hereby given to charge any fees, or credit overpayment necessitated by actions taken herein to Deposit Account 50-2117.

Respectfully submitted,

SEND CORRESPONDENCE TO:

Motorola, Inc.
Law Department

Customer Number: 24273

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